



COMMONWEALTH of VIRGINIA
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MEMORANDUM

TO: Benny R. Wampler, Acting Director
Department of Mines, Minerals and Energy (“Department”)

FROM: Sharon M.B. Pigeon
Sr. Assistant Attorney General

DATE: September 5, 2008

RE: Repeal of 4 VAC 25-10 (“Existing Regulations”) and adoption of 4 VAC 25-11 (“Proposed Regulations”)

The Office of the Attorney General was advised that the Department has proposed to amend the entire chapter at 4 VAC 25-10 by repealing the Existing Regulations and promulgating the attached Proposed Regulations at 4 VAC 25-11 in lieu thereof. You have asked that I provide you with a determination of whether statutory authority exists to take this action. After a review of the Proposed Regulations, I have determined that the regulations do fall within the Department’s powers and mandate to regulate coal mining operations and to promulgate regulations for that purpose.

Under Va. Code § 2.2-4007.02, every rulemaking body in the State is required to adopt public participation guidelines for use in the development of regulations. While the Department did have in place public participation guidelines under the Existing Regulations, the Proposed Regulations would adopt a revised version of the model public participation guidelines required by Va. Code §§ 2.2-4007.02. Chapter 321 of the 2008 Acts of Assembly (effective July 1, 2008) mandates that agencies either adopt model public participation guidelines issued by the Department of Planning and Budget, or revise others formulated on the model guidelines, as fast-track regulations by December 1, 2008. The only revision contained in the Proposed Regulations differing from the model guidelines is the addition of the section defining “Agency secretary for purpose of appeal.” The directives in that section were recent additions to the Department’s existing public participation guidelines. The Proposed Regulations are approved as to form as currently written.

I have reached this conclusion in reliance on the general authority to promulgate regulations given to the Department through Va. Code §§ 45.1-161.3, 45.1-161.4 and 45.1-161.5. Additional, more specific support for this action can be found at Va. Code §§ 2.2-4007.02, *et seq.* The fast-track rulemaking process under Va. Code § 2.2-4012.1 is appropriate as no agency discretion is involved in taking this action.